

MINUTES
POLICY AND PLANNING ADVISORY COMMITTEE

May 11, 2006 10:00 a.m.
Wisconsin State Bar Center
Madison, WI

Members Present: Hon. C. Ashley, Hon. M. Bohren, Mr. O. Boldt, Hon. J. Conen, Ms. H. Dugan, Mr. J. Dwyer, Hon. K. Foster, Hon. B. Gordon, Hon. E. Leineweber, Hon. P. Madden, Hon. J.D. McKay, Comm. D. McManus, Hon. W.M. McMonigal, Ms. K. Murphy, Hon. D. Nispel, Hon. W. Stewart, Mr. M. Tobin, Mr. J. Voelker, Mr. J. Zakowski

Members Absent: Chief Justice S. Abrahamson, Hon. R. Bates, Hon. R. Brown, Ms. K. Deiss, Hon. D. Nicks, Hon. R. Nuss, Hon. A. Torhorst, Mr. John Walsh

Guests Present: Hon. R. Sankovitz

Staff Present: Ms. D. Brescoll, Ms. S. Gervasi, Ms. N. Rottier, Ms. E. Slattengren

1. WELCOME/INTRODUCTIONS

Judge McMonigal led an introduction of PPAC members, guests and staff.

2. PREVIOUS MEETING MINUTES

The minutes from the PPAC's February 9th, 2006 meeting were approved as submitted.

3. Planning Committee

Judge Sankovitz, Chair of the Planning Committee updated PPAC on the status of the 2006-08 PPAC Report that was approved by PPAC at the February meeting. Upon this approval, more comments from various stakeholders emerged. Judge Sankovitz reported that the Planning Committee was very pleased that there were comments and glad that people are reading and reviewing the recommendations in the report. As a result of this feedback, the Planning Committee reviewed and made modifications to two sections of the Report.

1. Court Financing/Budget Constraints (pages 1, 15). The Planning Committee agreed while they don't believe there is a financial crisis statewide, there is a crisis in certain counties and this needed to be underscored. For this reason, "Budget Constraints" was added as a fourth overarching theme to the report and this discussion is detailed on the first page. Additional narrative was added on Page 15 under the "Funding Constraints" heading which now provides a recommendation that the Supreme Court (1) urge the Legislative Council to undertake a formal study of the issues framed in the February, 2004 report of the PPAC Subcommittee on Court Financing; and (2) implement the cost reporting and auditing recommendations made in that same report.
2. Municipal Courts related recommendations (pages 17, 18). After receiving a request from the Wisconsin Municipal Judges Association, the Planning Committee reviewed the narrative concerning the topic area titled "Profusion of Municipal Courts." Some municipal court judges felt the problems outlined in the report were overstated. Judge Sankovitz reported that he attended the Municipal Judges Association Meeting to discuss

this topic. Judge Nispel, the municipal court judge representative on PPAC, also spoke with Judge Sankovitz about the concerns. Some major points that were covered:

- municipal courts understand and are sensitive about many of the issues identified in the report and even agree with many of them including showing citizens that they are independent for the police, municipality, etc; and how this relates to the funding of municipal courts.
- Judicial independence is also a critical issue to many municipal court judges. This is a national issue, not just a municipal court issue.
- Chief Judges are in a difficult position because they have never served in a municipal court so how can they be expected to manage them. The Municipal Court Judges Association has established liaisons with some Chief Judges and this has worked very well so far and fosters the necessary communication.
- According to Judge Nispel, a very small percentage of cases in municipal courts are handled by non-lawyers. The question that remains: Are non-lawyers more likely to yield something that lawyers would? This should be studied further before making some kind of recommendation. Also, we must be sensitive to smaller communities where the pool of potential municipal court judges is much smaller.
- In terms of the recommendation of collecting more data and possibly having municipal court information on CCAP, Judge Nispel reported that there is already a great deal of municipal court information that is public including case files, statistics, etc.

Judge Nispel thanked PPAC and the Planning Committee for taking the time to revisit the municipal court section in the report. He stated that the Association does believe the revised language is better but that their ultimate preference would be that there be no section in the Report related to this topic at all. He also asked that municipal court judges be actively involved in any initiatives that may evolve from the Report in the future. One possible recommendation for future action proposed by Judge Nispel that would have the support of many municipal court judges is the Supreme Court studying and adopting a Rule that would require all municipal courts being established to contact, discuss and receive approval at the state level. A rule would require these conversations to occur. As an association, they are considering legislation to do this. Judge Nispel stated that he felt the issues put forth in the Report were similar issues that many municipal court judges are grappling with and that municipal court judges and circuit court judges are more alike than unlike. Judge Sankovitz agreed and stated that we must not fight the same battles separately but instead solve problems universally.

Ms. Murphy reported some experiences she has had with some municipal courts in her district being established without any notice provided to the state courts. Many PPAC members agreed that the Chief Judge should be involved from the beginning and more education about judicial independence is needed. For this reason, the word “establishment” was added to the Revised Report on page 18. The sentence in reference now states: *To protect the image and integrity of all judges, the Supreme Court should continue to develop uniform qualifications for municipal court judges and uniform operating standards for municipal courts as well as empower chief judges to more closely oversee the establishment, development and performance of municipal courts.* This concluded the discussion the municipal courts topic.

Judge Sankovitz reported that the Planning Committee will be working on a “Report Card” which will take a look back at the last biennial report’s recommendations and accomplishments to date. The Planning Committee is still deciding on the best process and timing in doing this, understanding that a two-year time frame is short and many initiatives are ongoing. This will be further discussed on the Planning Committee meeting in June.

Judge Ashley asked a question of Judge Sankovitz in regard to the Alcohol and Drug Dependency and Alternatives to Incarceration priorities and whether or not they should remain separate priorities since many of the objectives in both are being taken up by the Alternatives to Incarceration Subcommittee (AIC) currently. Judge Sankovitz reported that the Planning Committee felt that the constituency does not necessarily view the topic of drugs and alcohol as just an incarceration problem so they decided to make these two separate priorities. Judge Ashley and Mike Tobin reported that the AIC has had some discussion about its subcommittee name because it may not necessarily encompass its total scope and focus, and the subcommittee is in fact, taking up many of the drug and alcohol related objectives. This discussion was deferred to the next PPAC meeting after the AIC could meet and talk about it in more detail.

Judge Foster reviewed a document which outlined the Committee of Chief Judges comments and responses to the PPAC Report. The item of major focus to the Chief Judges was self-represented litigants and they felt that increasing the attorney supply and updating SPD standards were two separate issues. There was consensus among the Chief Judges around the issue of updating the SPD standards but little consensus around addressing the attorney supply and how to best proceed in regard to pro bono initiatives. The Chief Judges feel they need to take both a supporting and leadership role in the area of self-represented litigants. Additionally, the Chief Judges agreed that the Court Security topic was one in which they should take a leadership role in coordination with the District Court Administrators. The Chief Judges were somewhat surprised to see that the availability of reserve judges was mentioned in the report. Most Chief Judges are satisfied with the discretionary allotment process. (see meeting handout for detailed information).

Ms. Dugan stated that she noticed the state bar was not necessarily included in the self-help and SPD issues identified in the Report. She noted that there is a local bar committee and an annual conference and legal assistance committee that could be a part of this initiative. It was decided that the inclusion of this idea would be in the upcoming Planning Report Card.

The Planning Committee update concluded. PPAC voted to approve the Revised Critical Issues Report. The Report was approved with one dissenting vote by Judge Nispel.

Upon approval of the revised report, PPAC members continue to discuss the issue of judicial independence and some activity going on in South Dakota related to the topic. Commissioner McManus is going to be talking with some colleagues about the current South Dakota situation and will report back to PPAC on what she learns. Judge Nispel added that issue of judicial independence in relation to the “setting” of the court could potentially be addressed under the security and facilities section.

Mr. Voelker concluded the Planning discussion by noting the important role that PPAC is playing in terms of setting priorities for the court as an institution. Larger conversations have started about the established priorities, the Chief Judges have outlined what they can do, the Budget survey was geared toward the priorities identified in the report, etc. The work of PPAC and Planning is making an impact on the entire institution and everyone is running on a common page.

4. Budget Update

Ms. Brescoll gave an update on the biennial budget process. The first step of surveying the court system is complete. In an effort to tie the budget process with the recommendations of the PPAC Report, the budget survey focused on the four priorities outlined in Critical Issues 2006-08 and asked for prioritization of objectives within those areas. Ms. Brescoll reported that for the first time, the survey was put online and she received a total of 84 responses, almost three times more than in the past. In looking at the priorities among the objectives listed, repairing the SPD standards received the highest priority ranking. Identifying security risks and more diversion programs were also two areas that were highly ranked. Ms. Brescoll reported that in looking at the results in their entirety, opinions of the respondents were highly diverse. Ms. Brescoll will attend the PPAC Planning meeting in June to review preliminary budget proposals with the committee. The PPAC Planning Committee will attend the August PPAC meeting and the entire group will review the draft budget requests.

Ms. Brescoll and Mr. Voelker stated that the budget process and strategy has changed slightly and a more global approach is being taken. The court system is in a position where it needs to be pushing some broader policy issues and start making some requests around various priorities.

5. Alternatives to Incarceration Subcommittee

Judge Ashley reported on the progress of the Alternatives to Incarceration Subcommittee (AIC). He reminded PPAC members that at the last PPAC meeting the AIC presented a pilot project concept now titled AIM (Assess, Inform, Measure) that will enhance the quality and scope of information provided to the court about a specified population of offenders that could potentially be diverted from incarceration. The pilot project concept was presented to the Chief Judges at their April meeting and was received relatively positively.

The AIC is now in starting the process of contacting counties directly and selecting potential pilot areas. The subcommittee has established some criteria for pilot counties, specifically that they must have some form of a collaborating council and the Chief Judge must be fully on board with the project. The AIM working group of the AIC has had some preliminary discussions with potential pilot counties. There are many questions and details that will be worked out over the coming months prior to actual implementation. The AIC will continue to move forward and establish more details of the AIM concept including a project outline and timeline.

Judge Ashley also reported that the subcommittee created an Alternatives to Incarceration Web site that is located on the main site of the Wisconsin Court System. The site currently contains information about problem solving courts, criminal justice collaborating councils, the new Treatment Alternatives and Diversion (TAD) statewide grant program, and comprehensive directories of Wisconsin contacts who are implementing these types of programs and activities.

The Web site will be a dynamic resource and PPAC members were encouraged to provide feedback. It can be found at: <http://wicourts.gov/about/organization/programs/alternatives.htm>. A section on alternatives other than problem solving courts that are occurring around the state will be added in the near future.

Lastly, in reference to the discussion surround the Planning Committee's recommendations surrounding Drug and Alcohol Abuse and Alternatives to Incarceration, Judge Ashley stated that he would be discussing the potential changing of the subcommittee's name in the future to something that more adequately reflects the scope of the subcommittee's work and focus. This has been discussed briefly at past AIC meetings and will be put on the agenda again for further consideration. If the subcommittee wishes to change its name, Judge Ashley will come to the next PPAC meeting with potential options and explanations for the change.

6. Court Efficiencies Subcommittee

Ms. Murphy gave the Court Efficiencies Subcommittee progress report. Per the direction of PPAC at the last meeting, the group surveyed attorneys in regard to their opinions about the plea colloquy process. The consensus of responses was that the process should remain as it is because everyone seems to have their own way of doing it. There was no underlying consensus about the best way or how to change it. The subcommittee decided that their recommendation in this area will most likely be the creation of a judicial education program on the state of the law on plea colloquies.

The subcommittee is also looking into a Federal Rule 11 option in taking pleas. Rule 11 of the Federal Rules Of Criminal Procedure specifically addresses three types of plea agreements. One of these allows the parties to agree that "a specific sentence . . . is the appropriate disposition of the case." Rule 11(c)(1)(C). Trial courts are either to accept or reject the "C" agreement. If the court accepts the agreement, the court must impose the disposition provided for in the agreement. Rule 11(c)(3). If the court rejects the agreement, the court must inform the defendant that the court is not bound and afford the defendant the opportunity to withdraw the plea. Rule 11(c)(4). Some Court of Appeals judges are under the impression that a lot of pleas come from people who were disappointed with their sentences. The subcommittee is going to try and assess this a little more and identify some judges who use the Federal Rule 11 practice and see how it is working for them. With the information gathered on plea colloquies, the subcommittee will be making a recommendation to refer this discussion to the Judicial Council for further investigation.

Ms. Murphy stated that many of the major topic areas that this subcommittee was going to undertake are being taken up by other committees, mainly the Judicial Council. The Court Efficiencies Subcommittee has committed to finalizing its recommendations to PPAC by the August PPAC meeting and the will sunset at that point.

7. Videoconferencing Subcommittee

Judge McMonigal reported on the progress of the Videoconferencing Subcommittee. He reminded PPAC members that the group has now transitioned and is focusing on potential rulemaking, legislation and/or formal guidance in the use of videoconferencing in court related proceedings. The subcommittee has centered its discussions around the goal of "meaningful

participation.” At the last meeting the subcommittee went through an exercise of identifying certain proceedings and where they would fall in terms of VC use, putting them into one of three categories: Frequently, Sometimes/Maybe, Almost Never. Assumptions in this exercise were that we were focusing on the criminal process and that all VC equipment was up to standard and properly functioning.

Judge McMonigal stated the subcommittee is currently divided in its view of videoconferencing use. He is concerned that the public defender representation on the subcommittee may not adequately reflect the more global view of public defenders as a group. This has been somewhat of a roadblock in making progress.

Mr. Voelker reported that he had recently read about states putting together pandemic flu emergency plans for the courts involving videoconferencing . Many states are looking into this, and he suggested maybe we should also do some research. Judge McMonigal reported that the videoconferencing subcommittee would be meeting later in the afternoon following the PPAC meeting and would continue with its discussions in working toward guidelines that promote meaningful participation.

8. Legislative Update

Ms. Rottier provided PPAC with a legislative update. The legislature completed the main part of its floor period on May 4th, and it was one of the most active sessions in close to 20 years. Almost 2000 bills were introduced and about 500 were passed into law. Some coming out of Legislative Council have major revisions for the court. A technical rewrite of the Family Law Code will be effective starting January 1, 2007 and a rewrite of the Juvenile Justice Code went into effect on April 29th. Chapter 55 on protective placements was revisited and a final approval was given to a massive rewrite of the guardianship section. In regard to court financing, there was language related to mandating services but nothing came forward in the form of bills for this issue. The court realized a successful pay equity adjustment for judicial compensation for all circuit and appellate judges. Reserve judge pay will also be tied to the adjustment. Act 389 creates a pilot in Winnebago County that will impact second and third offense drunk driving. Offenders going to treatment will get a lesser punishment. Winnebago County brought this forward on their own. Many new surcharges were created and we only discovered some of them after the bills were passed (Wildlife violator compact, Chapter 20 violations, commercial fishing). Ms. Rottier noted that the Directors Office requested in the bill passed last session (2003 WI Act 139), a policy of being notified when new surcharges were proposed; this policy was not followed and we were never notified. She said she will be following up with the appropriate agencies so that we will be notified of surcharge changes in the future. Ms. Rottier also noted that all of these new fees and surcharges will affect the total amounts that programs are able to collect.

Judge McMonigal stated that he felt the courts need to devise a system of notifying judges when legislation is proposed so they can be aware of things before passage. Mr. Dwyer talked about the tracking system they utilize in Waukesha County that summarizes progress and action taken so necessary parties can react rapidly. Ms. Rottier stated that the courts have a similar process and that there are various groups of judges who are informed of legislation based on the topic area so they can provide input quickly. Near the end of session, much of the legislation occurs so

rapidly that there is not an effective mechanism to communicate and gather input. Ms. Rottier stated that she is working on devising some type of legislative information posting system that may be housed on CourtNet to communicate legislative activities.

9. Other Items

Ms. Slattengren reminded PPAC members that they had received the latest semi-annual Security and Facility report via e-mail. The topic of Security/Facilities will be an agenda item at the next PPAC meeting and the committee will discuss the data it is currently collecting and the recommendations surrounding this topic in the Planning Report.

Ms. Slattengren also reported that instead of having a PPAC specific presentation at the Judicial Conference, identified PPAC members will be presenting on some of the Committees priority policy areas including Alternatives to Incarceration and Videoconferencing and Technology.

The PPAC meeting was adjourned at approximately 12:20 p.m.

10. Future Meeting Dates

- Thursday, August 10th, 10:00 a.m. at the Wisconsin State Bar Center
(Joint meeting with Planning Committee)
- Thursday, November 2nd, 10:00 a.m.
(Tentative: Joint Meeting w/Supreme Court)